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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,190	10/31/2003	Barbara Grimpe	CWR-7779NP	1183
68705 7590 09/12/2008 TAROLLI, SUNDHEIM, COVELL & TUMMINO, LLP 1300 EAST NINTH STREET SUITE 1700 CLEVELAND, OH 44114				
EXAMINER				
LONG, SCOTT				
ART UNIT		PAPER NUMBER		
1633				
MAIL DATE		DELIVERY MODE		
09/12/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/698,190

Applicant(s)

GRIMPE ET AL.

Examiner

SCOTT LONG

Art Unit

1633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 12, 13, 17 and 23-27.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Janet L. Epps-Ford/
Primary Examiner, Art Unit 1633

Continuation of 11, does NOT place the application in condition for allowance because:

The examiner has admitted the claim amendments because the amendments simplify the prosecution.

Response to Arguments - Claim Rejections 35 USC § 102

Applicant's arguments (Remarks, pages 11) and Claim amendments, filed 1 August 2008, with respect to claims 29 and 56 have been fully considered and are persuasive. The rejection of claims 29 and 56 under 35 USC 102(b) as anticipated by Margolis et al. (US-5,230,937), has been made moot by the cancellation of claims 29 and 56 on 1 August 2008 and are hereby withdrawn.

Response to Arguments - Claim Rejections 35 USC § 103

Claims 1, 12-13, 17 and 23-25 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Moyer (Neurology Today, October 2002; 2(1): 26, 28) in view of Kleesiek (WO01/49831) and further in view of Jen et al. (Stem Cells 2000; 18:307-319).

Applicant's arguments (Remarks, pages 11-13) and Claim amendments, filed 1 August 2008, with respect to claims 1, 12-13, 17 and 23-25 have been fully considered but are not persuasive.

The applicant has argued that Moyer presents the work of Silver (one of the instant inventors) within one year of the time of filing the instant application. The applicant asserts that the teachings of Moyer used by the examiner in the 35 USC 103 rejection are not prior art because "the application was filed within one year of the publication of Moyer and the Applicant's claim priority prior to the publication date of Moyer." The publication date of Moyer is October 2002. The priority date of the instant application is November 1, 2002 from provisional application 60/423,082. The Moyer reference is not co-authored by either of the instant inventors, and therefore qualifies as a 102(a)-type reference. The applicant further suggests that the declaration filed on 1/19/2007 is a 1.131 declaration when it is actually a 1.132 declaration. If the applicants wish to swear behind the Moyer reference, they must submit a 37 CFR parag. 1.131 declaration.

Therefore, the examiner hereby maintains the rejection of claims 1, 12-13, 17 and 23-25 under 35 U.S.C. 103(a) as being unpatentable over Moyer in view of Kleesiek and further in view of Jen et al., for the reasons of record and the comments above.

/SDL/ Scott Long
Patent Examiner, Art Unit 1633